IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4220 of 2001

with

SPECIAL CIVIL APPLICATION No.4224 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANILAL CHHAGANBHAI PATEL

Versus

STATE OF GUJARAT,ADDITIONAL DEVELOPMENT COMMISSIONER

Appearance:

1. Special Civil Application No. 4220 of 2001

Ms.Nandini Joshi for MR MK VAKHARIA for Petitioner No. 1

Ms.Nandini Joshi, ASSTT GOVERNMENT PLEADER for Respondents No. 1 and 2.

MR MANISH J PATEL for Respondents No. 2,7

MR HS MUNSHAW for Respondent No. 2

RULE SERVED for Respondent No. 6

Mr.Jagish Mehta for MR YOGESH S LAKHANI for
Respondent No. 8

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 28/11/2001

COMMON ORAL JUDGEMENT

Both these matters have a common question of violation of principles of natural justice. Hence both the matters are decided by this common judgement.

2. The petitioner in SCA No.4220 of 2001 was elected as a Member of Bayad Gram Panchayat on 31.8.1995 and thereafter elected as the President of the Executive Committee and was holding the post when the show cause notice dated 9.12.1998 was issued under section 57(1) of the Gujarat Panchayats Act, 1993. The notice was replied by the petitioner. Before that the petitioner gave an application to the respondent authorities to grant him time and give him certain documents to enable him to reply to the charges levelled against him by the authorities. The application was given by the petitioners of SCA No.4220 of 2001 on 2.1.1999 which was replied to by the authorities by letter dated 20.1.1999, a copy of the reply is produced at Annexure 'D', page 33 of this petition. A copy of the show cause notice dated 9.12.1998 is produced at Annexure 'E' to the petition. Reply to the said show cause notice is produced at Annexure 'F'.

3. The petitioner in Special Civil Application No.4224 of 2001 is an Ex Sarpanch of Bayad Gram Panchayat. She was elected as a member of Bayad Gram Panchayat. Thereafter she was elected as Sarpanch on 31.8.1995. Her tenure as Sarpanch came to an end on 20.10.2000. It is true that during her tenure as Sarpanch, respondent no.3, Taluka Development Officer had issued a show cause notice which is also of the same date, i.e. 9.12.1998, a copy of which is produced at Annexure 'E' to Special Civil Application No.4224 of 2001. Said notice was replied by the petitioner, which is at Annexure 'F' to the petition. Before that the petitioner gave an application for granting time and for giving certain documents being application dated 17.12.1998, which is produced at Annexure 'C' to Special Civil Application No.4224 of 2001. Said application is replied by letter dated 21.9.1999, a copy of which is at

Annexure 'D' to the petition.

4. A perusal of the application dated 17.12.1998 reveals that the petitioner has stated that the petitioner is not having necessary record because the record is taken by the authorities-- District Development Officer, to whom the application is addressed for the purpose of inquiry. It is requested that the said record be made available to the petitioner. Not only that a further request is made to the effect that after making the record available, fifteen days time may be granted to enable the petitioner to reply the said notice. In para 1, it is also requested that as the notice issued on account of an application made by a member of the Panchayat, named Patel Sudhir Somabhai, who according to the petitioner is having political rivalry. The certified copy of the application made by the said member of the Panchayat be given to the petitioner. In para 2 of the said application a specific prayer is made that the record pertaining to octroi of Panchayat, Jawahar Rozgar Yojana and other developmental works including the Log Book of the Motor Cycle, which have been handed over for the purpose of inquiry to the District Development Officer may be returned. It is also mentioned in the application that a xerox copy of the receipt of the said record issued by the authorities when this record was handed over to the authorities is also enclosed with that application. The applicant once again repeated his request that she may be given fifteen days time after the said record is made available to the petitioner.

5. A copy of letter dated 21.1.199 addressed by the District Panchayat, Sabarkantha to the petitioner of Special Civil Application No.4224 of 2001 is produced. The request of the petitioner is turned down. A copy of the application made by the member of the Panchayat, Patel Sudhir Somabhai is denied. Reason given for not supplying the said application is that as an inquiry was conducted on receipt of the application and on outcome of that inquiry notice was issued under section 57(1) of the Gujarat Panchayats Act, 1993, copy of such application is not required to be supplied. It is also mentioned that if the notice dated 9.12.1998 is not replied within ten days, then presumption will be drawn that the petitioner has nothing to say in reply to notice and further proceedings will be taken. Leaned advocate for the petitioner submitted that there is a patent violation of the principles of natural justice and as authorities did not care to redress the grievance of the petitioner the present petition is filed. She also submitted that the orders passed by the authority are required to be quashed

and set aside on this ground alone.

6. Mr.Munshaw, learned advocate appearing for the District Development Officer, respondent no.2 submitted that he has no documentary evidence to show that the authorities have complied with the principles of natural justice, however, my submission to the following effect be taken into consideration:

(i) As the reply to the show cause notice is a detailed one, running into 14 pages, a presumption can be drawn by this Court that the authorities have made available the record to the petitioner as requested by him for filing the reply. The submission made by the learned advocate appearing for the authorities, having a long standing at the Bar on the face of it deserves to be rejected and hence rejected. Whenever a plea of violation of principles of natural justice is raised, the authorities have to satisfy with necessary documentary evidence that principles of natural justice are followed not only in letter but in spirit. Only because the person who is served with the show cause notice has filed a long reply, a presumption cannot be drawn that he was supplied the documents/ record prayed for.

(ii) Mr.Munshaw submitted that making application dated 17.12.1998, the petitioner has not reviewed or repeated any time before the authorities the request for supply of the documents, therefore, his submission made earlier about drawing a presumption should be accepted on this additional ground. This Court is at loss to accept the submission made by Mr.Munshaw.

(iii) Mr.Munshaw submitted that in the alternative, a presumption for compliance of principles of natural justice can be drawn as the petitioner was either Sarpanch or Upa Sarpanch and in law petitioner is having the record. Mr.Munshaw omitted to read the contents of the application dated 17.12.1998. His officers also did not take pains to read the contents of the application wherein the applicant has specifically mentioned that the record pertaining to Octroi, Jawahar Rozgar Yojana and other developmental works including that of Log Book of Motor Cycle, which have been handed over to the District Development Officer for the purpose of inquiry. Not only

that, the applicant had annexed a xerox copy of the receipt issued by the authorities at the time of handing over of the record to the authorities. Nothing better than rejecting this contention of Mr.Munshaw can be done.

And

(iv) Mr.Munshaw also submitted that looking to the seriousness of the charge, the Court should not take a lenient view in the matter and should hold that even if the record is not supplied, only because a long reply is filed to the notice, there is no violation of principles of natural justice and the petition be rejected. There being no substance in this submission, it is rejected.

7. Learned Assistant Govt. Pleader, Ms.Nandini Joshi invited attention of the Court to the affidavit in reply filed in the matter. She relied upon a para which reads as under:

"I say and submit that with regard to not supplying of the application by respondent no.8, Shri Sudhirbhai Patel, who has made his representation against the petitioner, it is informed that the allegations contained therein were related to different departments, i.e. to the Building Constructions, Panchayat, Revenue Department, Octroi Department, etc. Therefore, a team of technical and non technical officers was constituted and this Committee had taken personal visit of Bayad Gram Panchayat and examined the records, at that time on each issue the application of the respondent no.8 was read out to the petitioner. Therefore, as per the rules the copies of the records that is required to be given only that is given. And under the section 57(1) of the Panchayats Act, 1993 the show cause notice was issued to the petitioner on the basis of this application filed by the respondent no.8. Thus, the copy of the application filed by the respondent no.8 is not supplied, and the said reason was also communicated to the petitioner vide this office letter dated 21.1.99."

8. Learned Assistant Govt. Pleader is also not able to point out anything which shows that the documents which were sought for were supplied to either of the petitioners in these petitions. The para which is relied upon narrates as to why copy of the application made by

the member of the Panchayat, Sudhir Patel was not supplied to the petitioner. For the present I am not dealing with as to whether a copy of the application made by the member of the Panchayat which was the root cause of initiating the inquiry, after which the notice was issued, is required to be supplied or not. The petitions can be disposed of on a short ground of violation of principles of natural justice. Learned Assistant Govt. Pleader is not able to point out anything to show that the documents were supplied. In absence of any documentary evidence on record to show that the documents which were requested for, more particularly, when those documents were in possession of the District Development Officer, as were given by the petitioner for the purpose of inquiry were ever supplied to the petitioner, there is outright violation of principles of natural justice. Therefore, the orders impugned are required to be quashed and set aside.

9. Both these petitions are allowed. Rule is made absolute. Orders of the authority at Annexures 'A' and 'B' dated 10.5.2001 and 23.4.1999 to the petitions are quashed and set aside. Looking to the facts of the case, cost of Rs.2,500/-, (Rupees two thousand and five hundred only) in each case is awarded. The cost shall be borne by the Sabarkantha District Panchayat.

(Ravi R. Tripathi, J.)

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